

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Arnold Broadcasting Company, Inc.)	File Number: EB-02-DV-383
)	
Licensee of Station KNEC(FM))	NAL/Acct. No. 200332800007
Yuma, Colorado)	FRN 0006-1597-43
Facility ID #84353)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 4, 2002

By the District Director, Denver Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Arnold Broadcasting Company, Inc., ("Arnold Broadcasting") licensee of FM broadcast station KNEC, in Yuma, Colorado, has apparently willfully and repeatedly violated Section 301 of the Communications Act of 1934, as amended ("Act"), by operating an unlicensed aural broadcast auxiliary station without Commission authorization, and willfully and repeatedly violated Section 11.61 of the Commission's Rules ("Rules")¹, by failing to receive and transmit required weekly and monthly Emergency Alert System ("EAS") tests. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended,² that Arnold Broadcasting is apparently liable for a forfeiture in the amount of twelve thousand dollars (\$12,000).

II. BACKGROUND

2. On June 13, 2002, a Denver Office Agent inspected station KNEC. The station operated an unlicensed aural broadcast auxiliary radio station, specifically, a studio-to-transmitter link ("STL") on 948.0 MHz at KNEC's studio, 205 South Main Street, Yuma, Colorado. This STL link terminated at KNEC's transmitter site approximately 12 kilometers south of Yuma, Colorado. According to the Station Manager, the station had operated the STL since May of 1999.

3. Review of the FCC's databases revealed that Arnold Broadcasting submitted an application for a STL license to the FCC on July 16, 2002, approximately one month following the station inspection. On October 23, 2002, the FCC granted Arnold Broadcasting a license for the 948.0 MHz STL, and assigned call sign WPWD551.

¹ 47 U.S.C. § 301; 47 C.F.R. § 11.61.

² 47 U.S.C. § 503(b).

4. At the time of inspection on June 13, 2002, KNEC was monitoring the designated LP1 radio station KNNG, also owned by Arnold Broadcasting, and the National Weather Service for EAS purposes. KNEC was not monitoring the designated LP2 station, KATR(FM) or KRDZ(AM). According to the State of Colorado EAS Plan, the National Weather Service is a recommended additional source but not a replacement for the designated local primary station. Review of the station logs revealed that KNEC received no required monthly EAS test and no required weekly EAS test from the designated LP1 or LP2 sources for the period from May 13, 2002, to June 9, 2002. In addition, the station logs revealed that KNEC failed to transmit two required weekly EAS tests during the period from May 13, 2002, to June 9, 2002.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.³ The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly and the term "repeated" means the commission or omission of the Act more than once or for more than one day.⁴

6. Section 301 of the Act sets forth generally that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with this Act and with a license granted under the provisions of this Act. The Rules governing the licensing and operation of aural broadcast auxiliary stations, including STL's used by FM radio stations are set forth under Subpart E of Part 74 of the Rules.⁵ Based on the evidence, we find that Arnold Broadcasting willfully and repeatedly violated Section 301 of the Act by operating an aural auxiliary broadcast station without a license.

7. The Rules provide that every AM and FM broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to not participate.⁶ The EAS provides the President and state and local governments with the capability to provide immediate and emergency communications and information to the public.⁷ State and local area plans identify local primary sources responsible for coordinating carriage of common

³ 47 U.S.C. § 503(b).

⁴ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...." *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991). Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to Section 503(b), provides: "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁵ 47 C.F.R. § 74.501 *et seq.*

⁶ 47 C.F.R. §§ 11.11 and 11.41.

⁷ 47 C.F.R. §§ 11.1 and 11.21.

emergency messages from sources such as the National Weather Service or local emergency management officials.⁸

8. The Rules require all broadcast stations to ensure that EAS encoders, EAS decoders and attention signal generating and receiving equipment is installed so that the monitoring and transmitting functions are available during the times the station is in operation.⁹ The Rules also require AM and FM stations to (a) receive monthly EAS tests from designated local primary EAS sources and retransmit the monthly test within 60 minutes of receipt, and (b) conduct tests of the EAS header and EOM codes at least once a week at random days and times.¹⁰ Based on the evidence before us, we find that Arnold Broadcasting willfully and repeatedly violated Section 11.61 of the Commission's Rules by failing to receive and transmit the required monthly and weekly EAS tests.

9. The base forfeiture amount set by *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"),¹¹ and Section 1.80 of the Commission's Rules,¹² for operating an unlicensed radio station is \$10,000 and for EAS equipment not installed or operational is \$8,000. The *Forfeiture Policy Statement* does not establish a base forfeiture amount for violating the Commission's Rules requiring the monitoring, receipt and transmission of the required monthly and weekly EAS tests from the designated LP1 and LP2 sources. Therefore, we must determine what an appropriate amount should be for this violation.¹³ It is necessary to monitor the designated LP1 and LP2 sources and to receive and transmit the required EAS tests from these designated sources to ensure the operational integrity of the EAS system in the event of an actual disaster. The requirement that stations monitor, receive and transmit the required EAS tests is similar in both nature and severity to other required operational readiness checks. As failure to make measurements or conduct required monitoring carries a base forfeiture amount of \$2,000, pursuant to the *Forfeiture Policy Statement*, the forfeiture will be assessed in the amount of \$2,000.

10. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act,¹⁴ which include the nature, circumstances, extent, and gravity of the violation(s), and with respect to the violator, the degree of culpability, and history of prior

⁸ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

⁹ 47 C.F.R. § 11.35.

¹⁰ 47 C.F.R. § 11.61. The required monthly and weekly tests are required to conform with the procedures in the EAS Operational Handbook. *See also, Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket No. 01-66, *Report and Order*, FCC 02-64 (Feb. 26, 2002); 67 Fed Reg 18502 (April 16, 2002) (effective May 16, 2002, the required monthly EAS test must be retransmitted within 60 minutes of receipt.)

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999).

¹² 47 C.F.R. § 1.80.

¹³ The fact that the *Forfeiture Policy Statement* does not specify a base amount does not indicate that no forfeiture should be imposed. The *Forfeiture Policy Statement* states that "any omission of a specific rule violation from the...[*Forfeiture Policy Statement*]...should not signal that the Commission considers any unlisted violation as nonexistent or unimportant." *Forfeiture Policy Statement*, 12 FCC Rcd at 17,099. *See e.g., American Tower Corporation*, 16 FCC Rcd 1282 (2001).

¹⁴ 47 U.S.C. § 503(b)(2)(D).

offenses, ability to pay, and other such matters as justice may require. Applying the *Forfeiture Policy Statement* and the statutory factors to the instant case, a \$12,000 forfeiture is warranted.

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules, Arnold Broadcasting Company, Inc., is hereby NOTIFIED of an APPARENT LIABILITY FOR A FORFEITURE in the amount of twelve thousand dollars (\$12,000) for violation of Section 301 of the Communications Act of 1934, as amended and Section 11.61 of the Rules.¹⁵

12. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, Arnold Broadcasting Company, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration number (FRN) and also must note the NAL/Acct. No. referenced in the caption.

14. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554, and MUST INCLUDE THE NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁶

17. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Technical & Public Safety Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities ("OCBO") set forth in Attachment A of this

¹⁵ 47 U.S.C. §§ 301 and 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80 and 11.61.

¹⁶ See 47 C.F.R. § 1.1914.

Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to

Section 503(b) of the Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

18. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail # 7001 0320 0002 9702 9493, Return Receipt Requested and First Class Mail, to Arnold Broadcasting Company, Inc., 803 W. Main Street, Sterling, Colorado 80751.

FEDERAL COMMUNICATIONS COMMISSION

Leo E. Cirbo
District Director, Denver Office

Enclosure: Attachment A

FCC List of Small Entities

As described below, a "small entity" may be a small organization,
a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	
Note: With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 C.F.R. §121.104 and 13 C.F.R. § 121.106, respectively.	
<i>International Services</i>	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	

Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	
	Auction Special Size Standard – Small Business is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	
700 MHZ Guard Band Licensees	Auction special size standard - Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - Small Business is \$40M or less in annual gross revenues for three previous calendar years Very Small Business is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	
800 MHz Specialized Mobile Radio	Auction special size standard - Small Business is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	Small Business is 1,500 employees or less Small Government Entities has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	

Multipoint Distribution Service	Auction special size standard (1996) – Small Business is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – Small Business has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – Small Business is \$40M or less average annual gross revenues for three preceding years Very Small Business is average gross revenues of \$15M or less for the preceding three years
218-219 MHZ Service	First Auction special size standard (1994) – Small Business is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	Small Business is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) Very Small Business is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Miscellaneous	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)